COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Investigation by the Department on its Own Motion as to the Propriety of the Rates and Charges Set Forth in the Following Tariffs: M.D.T.E. Nos. 14 and 17, filed with the Department on December 11, 1998, to become effective January 10, 1999, by New England Telephone and Telegraph Company d/b/a Bell Atlantic Massachusetts

D.T.E. 98-57

# INITIAL BRIEF OF AT&T COMMUNICATIONS OF NEW ENGLAND, INC.

## Introduction.

AT&T Communications of New England, Inc. (collectively, "AT&T") submits this initial brief to address a number of issues and problems with those portions of proposed Tariff 17 submitted by New England Telephone and Telegraph Company d/b/a Bell Atlantic Massachusetts ("Bell Atlantic" or "BA-MA") that are at issue in this phase of D.T.E. 98-57.

Tariff 17 is so loaded with provisions that are anti-competitive and unfair to CLECs that it is not possible even to identify all of the problems with the tariff. As discussed in more detail below, the tariff is an aggressive Bell Atlantic "wish list" of impediments which Bell Atlantic seeks to raise against CLEC efforts to succeed in the local service market. This tariff should not be approved by the Department. Instead, the Department should order Bell Atlantic to resubmit the tariff in its entirety in a form that addresses all of the deficiencies identified by AT&T and other participants in this docket. AT&T also urges the Department not to implement the general rule stated in the MediaOne arbitration decision that tariff provisions will supercede related interconnection agreement language. In addition to being inconsistent with the letter and spirit of the Telecommunications Act of 1996, such a rule would place CLECs at a tremendous disadvantage in establishing fair terms and conditions for interconnections, as illustrated by the one-sided nature of the tariff provisions proposed by Bell Atlantic in this docket. If there is to be real competition in the local service market for the benefit of Massachusetts consumers, CLECs cannot be at the mercy of Bell Atlantic's unique and unilateral power to propose and implement tariff provisions at its discretion.

## EXECUTIVE SUMMARY

While AT&T takes issue with many of the tariff provisions proposed by Bell Atlantic, AT&T believes that the Department should be at least as troubled by what is not in the proposed tariff. AT&T emphasizes that, as demonstrated in the pre-filed testimony and at hearings, if Tariff 17 is implemented in the fashion advocated by Bell Atlantic, a competitive local exchange carrier ("CLEC") purchasing unbundled network elements ("UNEs") would face great uncertainty regarding whether its orders would be honored by Bell Atlantic, and if so, at what price and under what conditions. This tremendous uncertainty exists because (1) it is not clear when the terms of a CLEC's interconnection agreement ("ICA") apply and when the terms of the tariff apply, (2) the tariff provides for numerous charges that are not specified in the tariff language but reserved for case by case determination, (3) the tariff provides insufficient guidance on how rates that are identified in the tariff will be applied, (4) the tariff does not include rates and conditions for a number of UNE offerings required by the FCC, and (5) Bell Atlantic can unilaterally file revisions to the tariff at any time.

With respect to provisions that are included in the proposed tariff, AT&T emphasizes that the record evidence demonstrates that the applicable rates, to the extent not incorporated from other Department proceedings, are inflated and based on unsupported cost studies with unreasonable assumptions. The proposed tariff also includes a number of unreasonable terms, conditions and use restrictions.

Tariff Provision Language Should Not Supercede Interconnection Agreement Language. In its August 25, 1999 MediaOne Arbitration decision in D.T.E. 99-42/43, 99-52, a proceeding to which AT&T was not a party, the Department indicated that it will apply to Tariff 17 a general rule that a tariff provision approved by the Department always would supercede arbitrated provisions in previously executed ICAs and also could, at the discretion of the Department, supercede provisions in previously executed ICAs that were negotiated by the parties. AT&T strongly urges the Department not to adopt such a policy in this docket. Such a policy is at odds with the Telecommunications Act of 1996, which gives CLECs the right to rely on negotiated and arbitrated ICAs to establish the terms and conditions of interconnection and prohibits incumbent carriers from using terms and conditions made generally available to CLECs and approved by state commissions to escape its obligations to provide UNEs to CLECs under the terms of ICAs. In addition to being inconsistent with the requirements of the Act, such a policy would be inequitable to CLECs in that it would remove any ability to plan entry into the local exchange market by creating uncertainty and giving Bell Atlantic the power unilaterally to change terms and conditions that apply to a CLEC by filing new tariffs or tariff revisions. It would give Bell Atlantic, but not CLECs, the opportunity to revisit any portion of an ICA it did not like simply by filing revised tariff language.

If, notwithstanding AT&T’s objection to permitting ICAs to be modified by subsequent tariff filings, the Department nevertheless imposes a general rule that tariff provisions supercede provisions in ICAs, it is critical that CLECs be given a fair opportunity to review and challenge tariff proposals that will modify ICAs. At a minimum, Bell Atlantic must be ordered to provide advance notice of any proposed tariff language that will modify existing ICAs and to identify for the Department and CLECs exactly how proposed tariff language will modify ICAs. The Department should order that unless such advance notice and detail concerning how tariff language will impact existing ICAs is disseminated by Bell Atlantic, new tariff language will not supercede language in ICAs.

The Proposed Tariff Lacks Specificity Regarding The Rates And Charges To Be Applied And Improperly Omits A Number Of Offerings That Should Be Available To Clecs. It has been an impossible task even for a CLEC such as AT&T, which has actively participated in this docket and devoted countless hours to reviewing the voluminous tariff filings, to understand the charges that would apply under the tariff. That is evidenced by the difficulty AT&T had in attempting to chart the charges it understood Bell Atlantic seeks to impose under the tariff for originating and terminating calls. This basic uncertainty is wholly unacceptable and creates a disincentive for competition in that CLECs cannot make informed decisions to enter the market if they do not know what their costs will be. Bell Atlantic should be ordered to include in the tariff tables illustrating how all applicable recurring, non-recurring and miscellaneous charges will be applied under various scenarios and the tariff should not become effective until the table portion of the tariff is approved following a meaningful opportunity for CLECs to comment upon and challenge the tables filed by Bell Atlantic.

Contributing to the problem in determining charges that will apply under the tariff is Bell Atlantic’s decision to not specify certain charges but instead to provide that those charges will be determined on an individual case basis ("ICB"). ICB pricing creates a number of problems for CLECs, including cost uncertainty, delays in receiving offerings, the possibility of discriminatory pricing for disfavored CLECs and one-sided price negotiations. ICB pricing has been deemed to be inappropriate by the FCC and should not be approved by the Department.

Despite it’s understanding that it needs to do so, Bell Atlantic has not included UNEs that the FCC has ordered it to make available to CLECs. Further, despite extensive evidence of the merits and efficiencies that would be gained with off-site adjacent collocation, Bell Atlantic has refused to make such an offering. Apparently believing that it should not be held accountable for the timely provisioning of UNEs that it does make available under the tariff, Bell Atlantic also has taken the position that it need not include performance standards in the tariff. This insistence on a one-sided and incomplete tariff is further evidence of Bell Atlantic’s so far successful attempt to delay and impede the ability of CLECs to compete for Bell Atlantic’s local service customers.

The Proposed Tariff Contains Inflated Charges and Unreasonable Terms and Conditions. In a number of instances, the proposed tariff double-recovers Bell Atlantic’s actual costs, by imposing charges that already have been recovered in recurring rates or by relying on unreasonably low utilization factors. Bell Atlantic uses embedded cost studies, in some cases basing costs on five year old data, rather than the forward-looking TELRIC standards all parties agree apply to the UNE costs Bell Atlantic is seeking to recover. Further, the proposed tariff includes charges that have been rejected explicitly by the Department in other proceedings.

The proposed tariff also includes a number of unreasonable terms, conditions and use restrictions. Bell Atlantic’s collocation proposals are wholly inconsistent with FCC directives and prior Department orders. The proposed tariff includes a requirement (often referred to as Bell Atlantic’s geographically relevant interconnection point ("GRIP") proposal) that CLECs establish interconnection points at locations specified by Bell Atlantic. The GRIP proposal is directly at odds with the Telecommunication Act’s requirement that incumbent carriers interconnect at a point within the CLEC’s existing network and was explicitly rejected in the Department’s August 25, 1999 MediaOne Arbitration decision in D.T.E. 99-42/43, 99-52. Indeed, Bell Atlantic’s attempt to re-litigate the GRIP issue in the context of this tariff perfectly illustrates AT&T’s concern regarding a policy providing that tariff provisions supercede ICA provisions.

Bell Atlantic proposes to place inefficient and unreasonable restrictions on a CLEC’s use of the Enhanced Extended Link ("EEL") offering the Department ordered Bell Atlantic to add to the tariff, despite the Act and the FCC’s express prohibition against just such use restrictions. The proposed tariff also includes numerous other one-sided terms and conditions that advance Bell Atlantic’s business interest to the detriment of the CLECs and their customers. For example, the tariff provides that Bell Atlantic may unilaterally make changes to the network that could negatively impact the quality of CLEC services to their customers without the involvement of CLECs in the network design change process and without even notice to the CLECs of the network change. Bell Atlantic places low, and wholly arbitrary, limits on the number of expedited orders a CLEC can place. Bell Atlantic proposes to require burdensome forecasts from CLECs requiring them to accurately project their requirements for periods of years and lose the right to hold Bell Atlantic to performance standards if the forecasts are not accurate, but does not require itself to provide CLECs with forecasts of its future use of central office space so that CLECs will be able to anticipate collocation space availability.

Bell Atlantic apparently has determined that its interests are best served by burying unreasonable self-serving provisions in the voluminous tariff proposal and agreeing to modify the provisions only if and when they are discovered. For example, Bell Atlantic has expressed a willingness to remove the requirement of a ten foot buffer between CLEC and Bell Atlantic equipment because it created an uproar among CLECs. In sum, Bell Atlantic’s proposed tariff is replete with inappropriate charges, terms and conditions and should be rejected in its entirety by the Department. Further, given its voluminous size and the limitation inherent in litigating such a proposal all at once, the failure of CLECs to identify and raise every unreasonable term and condition in this proceeding should not give Bell Atlantic the right in future contract negotiations to rely on the Department’s approval of this tariff as an informed approval of every single term and condition.

TARIFF PROVISIONS SHOULD NOT SUPERCEDE INTERCONNECTION AGREEMENT PROVISIONS IF THE GOALS OF THE TELECOMMUNICATIONS ACT OF 1996 ARE TO BE ACHIEVED.

The Telecommunications Act Requires Interconnection To Be Provided Through Negotiated Agreements To The Extent Possible.

The Telecommunications Act of 1996 provides that CLECs shall have the right to negotiate the terms of binding ICAs with incumbent local exchange carriers ("ILECs"). The Act requires both the ILEC and the CLEC to negotiate in good faith concerning the terms of ICAs when a CLEC requests interconnection. If the ILEC and CLEC are unable to resolve certain issues through negotiation, state commissions are charged with arbitrating the open issues. Such arbitrations do not, however, address the open issues in a vacuum. In resolving open issues, the state commission is to consider the nature of the unresolved issues, the negotiating position of each of the parties on the unresolved issues, and how other issues were resolved by the parties in the course of negotiations. Moreover, the obligation to negotiate in good faith the terms of ICAs does not end once arbitration proceedings are commenced. The Act’s requirement to negotiate in good faith extends to the arbitration phase and anticipates the state commission’s assistance in the facilitation of further negotiations between the parties.

The Act does permit the ILEC to prepare and file a statement of terms and conditions that the ILEC generally offers within the state to meet the interconnection obligations of section 251 of the Act ("SGAT"). The Act also, however, explicitly warns that approval of an SGAT by a state commission does not relieve the ILEC of the duty to negotiate individually tailored ICAs with CLECs. Thus, while it is appropriate, and administratively sensible, to have a source of terms and conditions under which CLECs generally can purchase UNEs in a state, the existence of such generally available terms does not obviate the Act’s requirement that CLECs have the ability to negotiate ICAs that are tailored to their specific needs and business plans.

While Bell Atlantic emphasizes that Tariff 17 is not an SGAT because it was not filed under Section 252 (f) of the Act, the tariff is the functional equivalent of an SGAT if it is used to govern the terms under which Bell Atlantic satisfies its obligations under Section 251 of the Act to permit CLECs to interconnect to its network, including through the purchase of UNEs.

A General Department Rule That Tariff Provisions Supercede Provisions Contained In Interconnection Agreements Would Conflict With The Requirements Of The Telecommunications Act.

While the use of a generally applicable tariff as a functional surrogate for an SGAT may be quite sensible, it would be inconsistent with the letter and spirit of the Act for the Department to treat the terms of a general tariff as superceding the terms of individual ICAs reached through the negotiation and arbitration procedures specified in the Act. However, in its August 25, 1999 MediaOne Arbitration decision in D.T.E. 99-42/43, 99-52, a proceeding to which AT&T was not a party, the Department indicated that it will apply to Tariff 17 a general rule that a tariff provision approved by the Department always would supercede arbitrated provisions in previously executed ICAs and also could, at the discretion of the Department, supercede provisions in previously executed ICAs that were negotiated by the parties.

AT&T strongly urges the Department not to adopt such a policy in this docket, both because it is inconsistent with the requirements of the Act and because it places CLECs at a severe disadvantage in establishing the terms and conditions of interconnection. CLECs simply would not be able to rely on the terms of ICAs to plan entry into the local exchange market if the prospect of tariff language changing the terms of the ICA constantly loomed over their heads. It would give Bell Atlantic, but not CLECs, the opportunity to revisit any portion of an ICA it did not like simply by filing revised tariff language. Moreover, the Department’s policy that tariff provisions supercede negotiated terms, but not arbitrated terms, would remove any incentive that Bell Atlantic might otherwise have to negotiate provisions rather than arbitrate them, because – by arbitrating them – Bell Atlantic preserves its right to change them with a unilateral tariff filing.

In effect, the general rule suggested by the Department would shift the nature of the relationship between Bell Atlantic and CLECs from one governed by individually negotiated and arbitrated contracts to one governed by general state-wide tariffs.

While the uniformity of standard tariffed rates and terms and conditions governing the purchase of UNEs by CLECs may have some appeal to Bell Atlantic, and perhaps the Department, it is wholly at odds with the provisions and spirit of the Telecommunications Act of 1996.

Indeed, permitting the terms of ICAs to be superceded would be inconsistent with the practice elsewhere in the country, where tariff provisions supercede ICA provisions only where the ICA specifically states that its provisions are superceded by tariff. Moreover, any doubt concerning the actual impact the tariff will have on future ICA negotiations was answered by Bell Atlantic when it stated that in connection with future ICA negotiations "[t]o the extent that a carrier may seek terms that vary from the approved tariff, BA-MA believes that it can rely on the tariff."

If Tariff Provisions Are To Supercede Interconnection Agreement Provisions, It Is Imperative That Fair Notice And Review Procedures Are Established When Tariff Language Is Proposed That Will Affect The Terms Of Interconnection Agreements. Although AT&T emphasized that, for the reasons noted above, tariff provisions never should supercede provisions contained in ICAs, if the Department does establish a rule along the lines identified in its MediaOne arbitration decision, it is critical that fair procedures be established to give CLECs a meaningful opportunity to review and contest tariff provisions that would affect ICAs. At a minimum, Bell Atlantic must provide all CLECs whose ICAs will be affected by proposed tariff provisions advance notice of the proposed revisions and detail regarding how the proposed revisions will impact the ICAs. The Department should order that unless such advance notice and detail concerning how tariff language will impact existing ICAs is disseminated by Bell Atlantic, new tariff language will not supercede language in ICAs.

Without such notice and detail, a CLEC will have no practical control over the terms and condition under which it purchases UNEs from Bell Atlantic. A fundamental problem with using the tariff process to determine how interconnection will be effectuated in Massachusetts is that a tariff proposal submitted by Bell Atlantic is a Bell Atlantic "wish list" that has had no input from anyone outside of Bell Atlantic. If we are trying to build a model for interconnection service in Massachusetts, the governing document should have input from all interested parties. That cannot be accomplished if CLECs have no meaningful opportunity to participate in the process because they are not even aware that Bell Atlantic is proposing modifications to the terms of interconnection.

While Bell Atlantic suggests that its objective is not to slip tariff language that will impact ICA terms and conditions by unsuspecting CLECs, its conduct in these proceedings suggests otherwise. Bell Atlantic’s reaction to a bench proposal that notice be provided to CLECs of future tariff changes is telling of its real interests and objectives. At hearings, the bench proposed that Bell Atlantic agree to provide notice of any proposed changes to Tariff 17 to all CLECs with ICAs by regular mail and e-mail and by posting the proposed changes on its web site. At hearing, Bell Atlantic suggested a general amenability to the proposal and noted that it had "no policy problem with it," but wanted to consider the proposal further. The Department then issued a Record Request calling for Bell Atlantic to state its position and identify any reason why it could not accept any part of the proposal and whether it would be willing to hold technical sessions to respond to questions about the impact of proposed tariff provisions on ICAs.

In response to the Record Request, Bell Atlantic simply states that it does not believe such notice is necessary and that technical sessions would not be an effective way of addressing CLEC concerns with tariff revisions.

Bell Atlantic suggests instead that problems will be resolved if CLECs who have concerns contact them. Regarding notice of changes to CLECs, Bell Atlantic cross-references its response to Record Request 54, which makes clear that no notice at all of future tariff filings will be given to CLECs unless the Department reviews proposed changes, decides the changes are substantial and warrant investigation, and itself provides notice to CLECs through existing public notice procedures.

Bell Atlantic essentially is saying "trust us, we'll work with you informally" and at the same time "you are not even going to find out about changes until it is too late if we can help it." It is painfully obvious from Bell Atlantic's response to the Department's sensible proposal for providing notice of tariff changes and giving CLECs a real opportunity to understand the impact of tariff revisions on ICAs that Bell Atlantic is attempting to freeze CLECs out of the process to the extent possible. The stark reality is that Bell Atlantic wants to take advantage of the opportunity to use its unique power to rewrite tariffs to change unilaterally the terms and conditions under which CLECs can buy UNEs and wants CLECs as far removed from the process as possible. Again, the goal of the Telecommunications Act to establish fair and non-discriminatory UNE interconnection arrangements through negotiation and arbitration proceedings in which CLECs participate on a level playing field will be entirely frustrated if the Department permits Bell Atlantic unfettered use of its tariff powers to change the terms of ICAs. That problem only will be exacerbated if CLECs are not even provided with direct notice that tariff language has been proposed that will modify the terms of their ICAs.

THE PROPOSED TARIFF DOES NOT PERMIT CLECS TO DETERMINE WHAT RATES AND CHARGES WILL APPLY WHEN THEY ORDER UNBUNDLED NETWORK ELEMENTS FROM BELL ATLANTIC.

The Tariff Should Include Tables That Permit CLECs To Understand What Charges It Must Pay Under Various Scenarios.

While the Bell Atlantic tariff filing consists of hundreds and hundreds of pages covering a wide variety of topics in great detail, it lacks what is perhaps the most critical element of a comprehensive UNE tariff; it does not permit a CLEC to identify quickly and easily the charges it will have to pay. It was impossible even for a CLEC such as AT&T, which has actively participated in this docket and devoted countless hours to reviewing the tariff, to determine from the terms of the tariff as written the total charges it would incur when purchasing services under the tariff.

When AT&T attempted to go beyond the four corners of the tariff filing to determine applicable charges by serving an information request asking Bell Atlantic to fill in tables with the charges that would apply in various scenarios, Bell Atlantic objected to the request as unduly burdensome and refused to assist AT&T. AT&T then entered into informal discussions with Bell Atlantic in which Bell Atlantic provided some explanation as to how it intended to apply rates. Included in the additional information shared with AT&T by Bell Atlantic was that Bell Atlantic intends to charge Intrastate Terminating Access charges, rather than reciprocal compensation charges, when an AT&T local customer served bu UNES places an Intra-Lata Toll call that is terminated on Bell Atlantic's network. Based on the discussions between AT&T and Bell Atlantic concerning how rates would be applied in certain scenarios, AT&T prepared a table, entered into evidence as Exh. ATT-34, reflecting how it understood Bell Atlantic intended to apply tariff rates (an exhibit that should not be read as AT&T's view of appropriate charges).

It appears, however, that even Bell Atlantic has difficulty figuring out how tariff rates should be applied. In response to a Record Request that it modify as necessary, or affirm the accuracy of, Exh. ATT-34, Bell Atlantic filed a version of the table that generally adopted what AT&T had prepared based on discussions with Bell Atlantic. Bell Atlantic, however, later submitted a revised version of the table that eliminated the Intrastate Terminating Access charges that (1) it previously had told AT&T would be applied, (2) were addressed in Mr. LoFrisco's surrebuttal testimony as inappropriate, and (3) were included in Bell Atlantic's original response to the Record Request. The point here is not that the access charge should be included (indeed AT&T believes that it should not), but that rate application is uncertain and that even Bell Atlantic does not appear to have developed a fixed position on rate application.

Rate application cannot be a moving target and it cannot be discretionary or hidden. CLECs must be able to look to the tariff to see exactly what charges they will face in order to compete effectively for customers in the local service market. As Mr. LoFrisco testified at hearings, rate uncertainty increases the risk of entering the market and having tables included in the tariff that identify exactly how the different rates will be charged to CLECs under different calling types or interconnection scenarios is the best way of eliminating that uncertainty. The Department should order Bell Atlantic to provide completed tables of all charges that it would apply to CLECs under a variety of different scenarios as part of the tariff filing and should not allow the tariff to become effective until such tables are filed and approved. It is of critical importance, however, that all participants in this docket be given a meaningful opportunity to comment upon and contest the table portion of the tariff before the tariff becomes effective. In addition to including the tables identified above (amended of course to eliminate any charges determined to be inappropriate by the Department) the tariff should include completed versions of the blank tables submitted by AT&T in response to Record Request 29, which outline the various recurring, non-recurring and miscellaneous charges implicated by the tariff.

Bell Atlantic Has Omitted Critical Charges, Offerings And Conditions From The Tariff.

Bell Atlantic has failed to identify the applicable charges for a number of service offerings it proposes to price on an individual case basis.

Contributing to the problem in determining charges that will apply under the tariff is Bell Atlantic’s decision to not specify certain charges but instead to provide that those charges will be determined on an individual case basis ("ICB charges"). This ICB approach applies to a number of service offerings, including service orders, service connection, AIN Development, physical collocation, microwave collocation, Dedicated Cable Support for interconnection between collocated spaces, SCOPE collocation, cageless collocation and adjacent collocation.

There are a number of problems with ICB pricing. With ICB pricing, the CLEC has no idea what its costs will be when it orders a service, thereby creating a barrier to entry. Further, it creates the risk that an ILEC will discriminate between different CLECs with respect to pricing, a practice that Ms. Murray noted was revealed in California when ICB cost estimates were brought to light in a proceeding there. In addition, ICB pricing can delay a CLECs ability to receive an offering simply because there is a need to negotiate the price. Finally, there is the strong likelihood that the prices a CLEC pays under ICB pricing will be less than equitable because it involves an unbalanced price negotiation between a CLEC who needs the offering and an ILEC who does not want the CLEC to succeed in taking its retail business away.

The uncertainty involved in ICB pricing and the flexibility Bell Atlantic has in setting the prices is illustrated by Bell Atlantic’s approach to ICB pricing for "special construction" in the collocation context. Not only does Bell Atlantic not set prices for special construction activities, it does not even identify the types of activities that would qualify as special construction under the tariff.

The FCC has considered the concept of ICB pricing in connection with collocation offerings and concluded that it was not an appropriate pricing approach because it denies collocators advance notice of the costs associated with collocating and creates uncertainty. The FCC concluded that:

We find that LEC’s additional, extraordinary, or individually determined cost provisions violate the Commission’s requirement that expanded interconnection rate levels be uniform for all interconnectors and that the LEC’s tariffs identify the actual rates for expanded interconnection service.

In the same Order, the FCC explained why ICB pricing is improper:

Tariff provisions permitting LECs to recover unspecified charges for additional, extraordinary, or individually determined costs deny interconnectors advance notice of all the costs associated with physical collocation, creating an uncertainty for the interconnector. This uncertainty, in turn, may serve as a barrier to entering the interstate access market by interfering with the interconnector’s ability to implement its business plans and to market its services. In addition, this uncertainty may increase the risk of the interconnector’s business and the price that the interconnector is required to pay to attract debt and equity capital to finance its business. To the extent, therefore, that any of the LECs incur additional, extraordinary, or individually determined costs in conjunction with physical collocation service, they must file new tariffs identifying the service they are providing, the price of that service, the costs associated with providing the service, and justification for those costs. This will ensure that interconnectors receive advance notice of all costs associated with physical collocation service and will permit the Commission to judge the reasonableness of the services proposed by the LECs and the costs of providing those services.

The logic the FCC applies to interstate interconnection applies equally to local exchange interconnection, the Department should follow the FCC’s lead and not approve Bell Atlantic’s use of ICB pricing in the tariff.

Bell Atlantic has failed to include offerings that it is required to make. Despite its understanding that it needs to do so, Bell Atlantic has not included UNE offerings that it is required by law to make available to CLECs. Although the FCC has ordered ILECs to make available unbundled subloops, remote terminal collocation and DSL compatible loops, Bell Atlantic has not included those offering in the tariff. Indeed, Bell Atlantic has indicated that it is not even close to making those offerings available. The Department should not tolerate this resistance and delay in making essential UNEs available to CLECs and should order that Bell Atlantic promptly revise Tariff 17 to include all mandated UNEs.

Bell Atlantic has demonstrated a pattern of resisting as long as possible its obligations to provide UNEs to CLECs. Its practice is to not make offerings available until every legal challenge concerning the FCC’s designation of UNEs is exhausted and it is ordered by the Department to make the UNE available. In fact, it is only when it has been absolutely ordered to provide the UNE that it begins the mechanics of figuring out the costs and terms for provision of the UNE. Bell Atlantic’s unreasonable efforts to delay offerings and impede the ability of CLECs to compete for local service customers is perhaps best illustrated by the long-awaited UNE-P offering. Until recently ordered to make UNE-P available under Tariff 17, Bell Atlantic took the position that, despite its established obligation to make UNE-P available, it would not offer UNE-P under the tariff until the conclusion of the 271 proceedings. When pressed by the bench for an explanation of the delay, Bell Atlantic responded as follows:

Q (ISENBERG): What possible reasons could Bell Atlantic have for wanting to wait until the conclusion of the 271 proceeding to incorporate its latest UNE-P proposal in Tariff 17?

A (STERN): I don’t know.

The response is disingenuous. The obvious answer to the question, as demonstrated by the long and tortured history of the CLECs’ efforts to get UNE-P in Massachusetts is that Bell Atlantic does not want to make UNE-P available and, having been ordered to do so, wants to delay the offering for as long as possible. While Bell Atlantic has been forced to file UNE-P tariff language, its resistance is illustrative of how it apparently intends to address the other offering now required by the FCC.

In its November 5, 1999 UNE Remand Order, the FCC required ILECs to make available, inter alia, DSL-capable loops, unbundled access to subloops, and collocation at any technically feasible point, including remote terminals. Bell Atlantic is aware of the UNE Remand Order, yet has done nothing to amend the tariff to include the offering required by the FCC. Bell Atlantic represents that it plans to update the tariff to comport with the UNE Remand Order, but claims that although it has finished its initial review of the order it is still in the process of reviewing the order and needs to "go back and look at it again." The record reveals that Bell Atlantic understands exactly what the UNE Remand Order requires it to provide, but is in no hurry to implement those offerings.

Bell Atlantic concedes that "there may be some additional things that we are now required to offer." With respect to collocation at remote terminals, Bell Atlantic acknowledges that such collocation is technically feasible, but claims that it would involve a "[m]ajor development effort." Bell Atlantic says that it has begun that development effort and "is working on defining the product" and "identifying some of the internal systems that would be impacted." In Response to a Record Request, Bell Atlantic stated that it "intends to comply with the UNE Remand Order," but that "it is premature for BA-MA to determine how long it will take" to evaluate remote terminal collocation arrangements. On December 17, 1999, Bell Atlantic stated that it planned to file DSL-compatible loop language to be incorporated in Tariff 17 "[i]n the near future" though it did not "have an exact date." Bell Atlantic also indicated that it intended to file tariff language governing subloop unbundling, though "there’s some development time involved."

Bell Atlantic’s delay in even preparing to offer the UNEs mandated by the FCC in the UNE Remand Order is wholly inappropriate in light of the FCC’s Ordering Clauses. The Order Clauses make the Order’s requirements (and Bell Atlantic’s requirement to make the designated UNEs available) effective within 30, or for several specified UNEs 120, days after the FCC’s rules are published in the Federal Register. The rules were published in the Federal Register on January 18, 2000.

Bell Atlantic refuses to make off-site adjacent collocation available despite compelling reasons to do so.
In addition to dragging its feet on making offerings mandated by the UNE Remand Order available, Bell Atlantic also has refused to offer off-site adjacent collocation to CLECs despite ample evidence of the benefits of such an option. CLECs are being told on a daily basis by Bell Atlantic that central offices are filling up fast with collocations. Although CLECs may not prefer adjacent collocation to physical collocation in a central office, it is preferable to no collocation. In order to preclude being shut out of collocation, CLECs must have the options of both on-site and off-site adjacent collocation. Off-site adjacent collocation is necessary because for some central offices, particularly in urban settings, there is no on-site space available. In fact, off-site adjacent collocation is easier for Bell Atlantic because the CLECs provide their own space, power, equipment and cages. For off-site collocation the only thing that would need to be priced would be the transport to the collocated equipment. Of course, to the extent that CLECs collocate off-site, it leaves central office space open that otherwise would be claimed. This sensible collocation option has been implemented throughout the country by other ILECs. Yet Bell Atlantic refuses to make this option available to CLECs on the ground that it cannot be ordered to provide it.

Bell Atlantic refuses to incorporate performance standards into the tariff.
In addition to limiting the tariff offerings, Bell Atlantic has taken the position that it need not include performance standards in the tariff. Thus, Bell Atlantic apparently believes that even if it must offer UNEs to CLECs it need not be held accountable when it fails to provide UNEs in a timely and efficient manner. When asked through a Record Request how CLECs ordering under Tariff 17 would avail themselves of performance standards established in the Consolidated Arbitrations, Bell Atlantic responds that CLECs "would have to negotiate an agreement with BA-MA relating to performance standards." Bell Atlantic’s resistance to including performance standards in the tariff suggests that CLECs will have to possess extraordinary negotiating skills indeed if they are to convince Bell Atlantic to impose performance standards on itself when it has no incentive to do so and already has refused to incorporate them in the tariff.

Bell Atlantic has not, and cannot, provide any legitimate basis for not including in the tariff FCC mandated offerings, off-site adjacent collocation or the performance standards established in the Consolidated Arbitrations and the Department therefore should order that they be included in Tariff 17.

THE PROPOSED TARIFF CONTAINS NUMEROUS INAPPROPRIATE CHARGES AND REQUIREMENTS AND RELIES ON IMPROPER COST STUDIES.
While, as argued above, the proposed tariff is missing a number of critical

provisions that should have been included, such as detail regarding how rates will be applied, charges for a number of offerings and performance standards, the provisions that have been included in the tariff are in many instances inappropriate and anti-competitive. The tariff includes charges that already have been rejected by the Department, relies on assumptions that result in charges greatly in excess of costs, attempts to recover non-recurring charges for costs that have been built into the recurring rates, utilizes cost studies that are fundamentally flawed and imposes inappropriate conditions on CLECs. In light of these overwhelming problems with the tariff, AT&T recommends that the entire tariff be rejected by the Department and that Bell Atlantic be ordered to file an entirely new tariff that addresses the fundamental problems identified by AT&T and other CLECs. Because the problems with the tariff are so extensive, it would be impossible to address each of the deficiencies in the voluminous tariff. Instead, AT&T will highlight its concerns with a number of the more egregious of the deficiencies.

The Department Should Reject Bell Atlantic’s Grip Proposal In Any Form
Under the disingenuously labeled section "Reciprocal Arrangements" (Part A, Section 1.7.12, page 31) Bell Atlantic has proposed interconnection requirements that are the opposite of reciprocal: they shift all of the incremental costs of interconnection arising from the implementation of competition in the local exchange market on to other local exchange carriers. Bell Atlantic’s proposal is also contrary to FCC requirements, contrary to Department requirements, and extremely anticompetitive. Moreover, Bell Atlantic seeks to justify its proposal using overstated and unreliable estimates of the incremental costs of implementing local exchange competition.

Bell atlantic’s grip proposal is a moving target.
As proposed, this section of the tariff states:

A CLEC that assigns telephone numbers must make available to the Telephone Company at least one point of termination per LATA where the CLEC assigns telephone numbers. As the CLEC assigns telephone numbers in different rate centers or geographic areas that are served by different Telephone Company rate centers (equivalent rate centers), the Telephone Company may request and the CLEC shall provide, at the Telephone Company’s option, either a point of termination within an equivalent Telephone Company rate center, or a rating equivalent through provisioning or purchasing transport to a location designated by the Telephone Company.

In response to testimony from CLECs in this proceeding demonstrating the costs that it would shift from Bell Atlantic to the CLECs, Bell Atlantic appeared to modify its position. In Mr. Howard’s surrebuttal testimony he states:

In order to minimize the number of interconnection points, BA-MA is willing to propose that, as an alternative to establishing IPs in each local calling area where the CLEC represents to have facilities and be serving customers though its choice of number assignments, BA-MA would be willing to transport "local" traffic to a hub location covering a larger area. Since many carriers already use BA-MA tandems as hubbing points, BA-MA proposes that a CLEC would meet a GRIP obligation by establishing a GRIP at the BA-MA tandem wire center serving the rate center where the CLEC assigns telephone numbers (in the case of a single-tandem LATA, this would occur at BA-MA host end offices).

In his cross examination testimony, Mr. Howard further indicated that Bell Atlantic was relaxing the requirements of its initial proposal and requiring interconnection points at each tandem wire center rather than each rate center. Mr. Howard stated:

What we're doing is making clear that the tandem will be in Bell Atlantic's view an acceptable IP designation for a CLEC. And so what the tariff in place would have done is say that we could have requested an IP in any rate center and that what we're doing is moving back from the rate center, which is still an acceptable IP in our view, and saying you could also designate the tandem as an IP.

Moreover, Mr. Howard indicated that the requirement to locate at a tandem switch would be relaxed to a requirement to locate within a tandem serving area at a distance that would be mutually acceptable:

Q. Would this include establishing an IP within the tandem serving area, or does it have to be actually at the tandem wire center as part of a collocation?

A. No, within the tandem serving area.

Q. It could be within the serving area.

A. Yes.

MS. BALLARD: Could I ask: How large is the tandem serving area?

THE WITNESS: Well, that gets to what is an efficient place within the proximity of that tandem for us to connect our two networks. So if they had a closet POP down the street, they could say, "That's now my IP that's physically in that tandem serving area. That's where I would like traffic from that rate center or the rate center served by that tandem to be delivered," and it would be our responsibility to go deliver it to them there. That's part of what would have to be negotiated in each particular arrangement.

MS. BALLARD: But you're not stating that there's a designated mileage limitation around the tandem where that point would be established.

THE WITNESS: A physical distance from the physical tandem building? We haven't. That's where you'd get to, you know, what is reasonable. We'd like to be able to negotiate something that is mutually acceptable.

Q. So the precise location, then, you would envision would be the result of negotiations between the two parties rather than one particular party having the say over where the IP would be located?

A. I would like to think that both parties would want to have some back-and- forth about where that point should be located, to the extent it's not physically in the tandem office or the end office, yes.

Incredibly, however, when Bell Atlantic was asked to reduce that commitment to writing, it turned out that Bell Atlantic was giving only "the sleeves off its vest." In response to a record request asking for the tariff language that Bell Atlantic would propose to implement its "modified" proposal, Bell Atlantic submitted the following:

A CLEC that assigns telephone numbers must make available to the Telephone Company at least one point of termination per LATA where the CLEC assigns telephone numbers. As the CLEC assigns telephone numbers in different rate centers or geographic areas that are served by different Telephone Company rate centers (equivalent rate centers), at the Telephone Company’s option, the Telephone Company may request that the CLEC establish one of the following arrangements for traffic terminating to the CLEC numbers assigned to that rate center: 1) a point of termination within the rate center or equivalent rate center; or 2) a point of termination at the Telephone Company’s local and/or access tandem which the rate center or equivalent rate center subtends; or 3) a point of termination within one mile of the Telephone Company’s local and/or access tandem which the rate center or equivalent rate center subtends, or such other point within proximity of said tandem, as the parties may agree.

It does not take a graduate of Oxford to recognize that the revised language adds to Bell Atlantic’s rights the right to request an interconnection point at a tandem or within one mile of a tandem. It does not appear to relieve CLECs from the requirement to establish a point of termination within a rate center or equivalent rate center if Bell Atlantic were to choose that alternative. Moreover, given the proposed language limiting the point of interconnection to a one-mile radius from Bell Atlantic’s tandem, it is hard to imagine free negotiations and a "mutually acceptable" conclusion to those negotiations, when Bell Atlantic’s tariff has already predetermined the result.

In any event, whether the Department has before it the original GRIP proposal or a modified version of it, the Department must reject any such requirement. The three principal reasons are discussed below.

Bell Atlantic’s GRIP Proposals Violate FCC Requirements, Violate Department Requirements and Are Anticompetitive.
The Original and Revised GRIP Proposals Violate FCC Requirements.
The FCC rejects the requirement that the CLEC establish an interconnection point in every rate center within the LATA. Paragraph 209 of the FCC’s First Report and Order states:

Section 251(c)(2) gives competing carriers the right to deliver traffic terminating on an incumbent LEC’s network at any technically feasible point on that network, rather than obligating such carriers to transport traffic to less convenient or efficient interconnection points. Section 251(c)(2) lowers barriers to competitive entry for carriers that have not deployed ubiquitous networks by permitting them to select the points in an incumbent LEC’s network at which they wish to deliver traffic.

The FCC emphasizes in this language that the CLEC is under no obligation to "transport traffic to less convenient or efficient interconnection points." It is precisely these less convenient or efficient interconnection points that Bell Atlantic is attempting to mandate through the GRIP proposal. Bell Atlantic wants to require CLECs to interconnect at every rate center in which they offer numbers. However, the FCC expressly prohibits Bell Atlantic from making such a requirement. Further, the FCC was well aware of the reason for prohibiting such a requirement – that CLEC networks would not have the ubiquitous networks that incumbent LECs have. As such, the interconnection requirements would need to be established giving the preference to the CLEC in selecting the interconnection point. It is not that Bell Atlantic has no say in establishing these interconnection arrangements, but Bell Atlantic cannot mandate where the CLEC interconnects with Bell Atlantic’s network.

The Original and Revised GRIP Proposals Violate Department Requirements.
The Department has also rejected Bell Atlantic’s GRIP proposal. In the MediaOne/Bell Atlantic and Greater Media/Bell Atlantic arbitrations, the Department stated:

Regarding Bell Atlantic’s request that the Department approve its proposal to require MediaOne and Greater Media to provide IPs at or near each of Bell Atlantic’s tandems, neither the Act nor the FCC’s rules requires MediaOne or any CLEC to interconnect at multiple points within a LATA to satisfy an incumbent’s preference for geographically relevant interconnection points. See FCC Local Competition Order at 198-199.

Therefore, we find that a CLEC may designate a single IP for interconnection with an incumbent even though that CLEC may be serving a large geographic area that encompasses multiple ILEC tandems and end offices. There is no requirement or even preference under federal law that a CLEC replicate or in a lesser way mirror an ILEC’s network. Indeed, the Act created a preference for CLECs to design and engineer in the most efficient way possible, which Congress envisioned could be markedly different than the ILEC’s networks. Id at 172.

Moreover, the Department rejected the notion that Bell Atlantic could require CLECs to interconnect at or near each of Bell Atlantic’s tandems. Yet, Bell Atlantic acts as if it is being reasonable when it purports to relax an even more eggregious proposal requiring interconnection at every rate center to one that requires interconnection at every tandem. (As noted above, Bell Atlantic’s offer to relax the requirement seems to have been withdrawn, based upon the proposed tariff language in its response to MediaOne RR 105.)

The Original and Revised GRIP Proposals Are Anticompetitive.

In The Absence Of The GRIP Proposal The Costs Associated With Implementing Local Exchange Competition Are Shared Among All Carriers; Bell Atlantic's GRIP Proposal Would Shift All Of Them On To The CLECs.
In the absence of a GRIP requirement, each carrier in a competitive, multi-carrier environment has an obligation to transport its own customers' calls to the destination end-user on another carrier's network (or bear the cost of such transport). This is true regardless of the location of the point at which the networks interconnect ("point of interconnection" or "POI"). Therefore, in the absence of a GRIP requirement, each carrier has an incentive to negotiate with the other carrier to obtain the most efficient means for accomplishing the transport of its own customers' calls that are destined to the other carriers' network.

If GRIP were adopted, CLECs would continue to have the obligation (and cost) of transporting their own customers' calls all the way to the destination end-user on Bell Atlantic's network; however, Bell Atlantic would no longer have the obligation (and cost) of transporting its own customers' calls all the way to the destination end user on the CLEC's network. Under GRIP, CLECs would assume Bell Atlantic's responsibility and cost of transporting Bell Atlantic's customers' calls that are made to the CLEC's network. In other words, the CLEC would have the responsibility of transporting calls between the networks in both directions. Obviously, in this situation Bell Atlantic would have no incentive to negotiate more efficient interconnection arrangements.

Because The Costs At Issue Arise From The Onset Of Competition, It Would Be Anti Competition To Allocate All Of Them To The New Entrants.
Bell Atlantic's GRIP proposal was apparently motivated by its recognition that it will cost more to complete calls to end-users on other carriers networks than it costs to complete calls to end-users on its own network. This increased cost is a function of operating in a multi-carrier competitive environment as opposed to a monopoly environment. It is more expensive for any carrier to complete a call to an end-user on another carrier's network than to complete a call to an end-user on its own. Other carriers are not seeking to recover such costs from Bell Atlantic. The increased cost is, in effect, a "competitive onset" cost, that is, a cost that arises from the implementation of Congressional intent to establish a competitive local exchange market.

It is well-recognized as a matter of economics that the imposition of all competitive onset costs on CLECs is extremely anticompetitive. It is well established as a matter of regulatory policy that, in order to avoid such anticompetitive results, costs that arise from the implementation of a competitive market, should be borne by the industry as a whole and ultimately recovered from end-users. The FCC has considered similar issues on many occasions and required that the recovery of such costs by industry participants be established on a competitively neutral basis. For example, in ¶ 94 of its Second Report and Order, which implemented local dialing parity requirements, the FCC stated (cites and footnotes omitted; emphasis supplied):

In the Number Portability Order, we concluded that costs for number portability should be recovered on a competitively-neutral basis. We also concluded that any recovery mechanism should (1) not give one service provider an appreciable, incremental cost advantage over another service provider, when competing for a specific subscriber; and (2) not have a disparate effect on the ability of competing service providers to earn a normal return. We therefore reject the arguments of those commenters that assert that only new entrants should bear the costs of implementing dialing parity, because such an approach would not be competitively neutral.

In the present situation, the most competitively neutral method for sharing the increased costs of a multi-carrier environment is for each carrier to bear the cost of transporting and completing calls that its own customers make. This method also creates the correct incentives for carriers to negotiate the most efficient interconnection arrangements. A review of the diagram on Exh. MediaOne/ATT -2 demonstrates the validity of these conclusions.

In the diagram, Customers A and D are served by the CLEC, and Customers B and C by Bell Atlantic. (A copy of the diagram is attached to their brief as Attachment A.) The line on the diagram between the CLEC switch and the Bell Atlantic tandem is the "interconnection facility" that connects the two networks. The Point of Interconnection between the two networks could occur anywhere along that line. In the absence of a GRIP requirement, the CLEC is responsible for transporting a call from Customer D to Customer B, for example. This means that the CLEC would bear the costs of "transporting" the call from the end-user (Customer D) to the CLEC switch and, via reciprocal compensation payments, from (and including) the Bell Atlantic tandem to the destination end-user (Customer B) (including the switching at Bell Atlantic End-Office No. 1). (The cost of the interconnection facility between the CLEC switch and the Bell Atlantic tandem is negotiated separately when the two carriers establish their interconnection arrangements.) Similarly, in the absence of GRIP, Bell Atlantic is responsible for transporting a call from Customer B to Customer D. This means that Bell Atlantic would bear the costs of "transporting" the call from the end-user through the tandem switch and, via reciprocal compensation payments, from (and including) the CLEC switch to the destination end-user. Thus, in the absence of GRIP, the obligations are symmetrical and reciprocal.

Under GRIP, the symmetry is upset. The CLEC will still be responsible for carrying Customer D’s calls all the way to Customer B. However, now Bell Atlantic will no longer be responsible for the full cost of call flows in the other direction. Under a rate center-based GRIP requirement, Bell Atlantic will be responsible for carrying Customer B’s call to Customer D only to (and through the switch at) Bell Atlantic’s End Office No. 1. At that point, the CLEC would be responsible for bringing the call all the way to Customer D. Under the proposal, the CLEC would meet that responsibility either by building an interconnection facility all the way from Bell Atlantic End Office No. 1 to its own switch, or by paying Bell Atlantic usage based charges to transport the call from Bell Atlantic End Office No. 1 to the Bell Atlantic tandem and to switch the call at the tandem. Apparently, under Bell Atlantic’s proposal, the method that the CLEC may use for satisfying the obligations that Bell Atlantic seeks to shift to the CLEC is for Bell Atlantic to determine. The CLEC must simply do what it is told.

Clearly, Bell Atlantic’s GRIP proposal eliminates any incentive that Bell Atlantic would otherwise have to negotiate different interconnection arrangements that could reduce the cost of interconnection between the two networks. Without GRIP, as traffic flows increase between Bell Atlantic End Office No. 1 and the CLEC switch, both the CLEC and Bell Atlantic would have an interest in negotiating an alternative to the relatively more expensive method of transporting calls between Bell Atlantic End Office No. 1 and the tandem and switching such calls at the tandem. (Bell Atlantic bears such costs when the call flows from Customer B to Customer D because it requires uncompensated use of its facilities; the CLEC bears such costs when the call flows from Customer D to Customer A because it pays Bell Atlantic reciprocal compensation charges for use of Bell Atlantic’s network facilities to terminate the call.) With GRIP, Bell Atlantic, does not in theory have an interest in negotiating more efficient interconnection arrangement, because it bears none of the cost of connecting the Bell Atlantic end office switch and the CLEC switch.

The fact is, however, that in practice such interconnection arrangements must be negotiated. Mr. Howard explicitly states that it is not feasible to draft a tariff provision of general application to cover all of the ways in which it may be beneficial for the parties to interconnect in every specific and unique circumstance. There will be times when Bell Atlantic will want to interconnect in ways that are different from the interconnection arrangements that would result from the GRIP alternatives prescribed in the tariff. What the GRIP tariff language does, therefore, is give to Bell Atlantic all of the leverage in such negotiations, since Bell Atlantic could always require one of the alternatives prescribed by the tariff if it does not get exactly what it wants in negotiations. Allowing Bell Atlantic to use the threat of imposing all the competitive onset costs on to its competitors in order to obtain the interconnection arrangements that Bell Atlantic deems most desirable will profoundly impede the development of local competition in

Massachusetts.

Although Bell Atlantic's "Increased" Costs Arising From The Introduction of Competition Should Not Be Recoverable from Its Competitors, Bell Atlantic's Estimate Of These Costs Is Unstable, Overstated And Unreliable.

Bell Atlantic Failed To Prove Any Increased Costs.

Bell Atlantic presented it GRIP proposal in this tariff which was originally filed in 1998. Bell Atlantic's justification for seeking GRIP has been from the outset based on a claim that Bell Atlantic incurs more costs to complete its customers' calls to end-users on another carriers network than then the costs it would incur to complete such calls to end-users on its own network. The purpose of the GRIP proposal, therefore, has been to relieve Bell Atlantic of what it contends are significant "additional" costs. Notwithstanding this purpose, Bell Atlantic did not, when it filed proposed Tariff 17, seek to demonstrate the amount of such costs. Indeed, Bell Atlantic did not even make such an effort when it filed its rebuttal testimony on August 16, 1999. Bell Atlantic waited until November 22, 1999, and then filed only an affidavit of Sheila Gorman attached to Mr. Howard's surrebuttal testimony.

Bell Atlantic's cost analysis, however, did not come to rest with the filing of Bell Atlantic Exhibit 5. In response to AT&T discovery requesting only a "Special Study" that Bell Atlantic had referenced as a source of data for its cost analysis, Bell Atlantic submitted an entirely new cost analysis in which it corrected for certain mileage estimates, with the effect that its claimed increased costs increased still further. The results contained in Exh ATT. 76, however, are still not the results on which Bell Atlantic is now presumably relying. In response to a record request which asked Bell Atlantic to reconcile differences between estimates Bell Atlantic provided in this case and estimates it provided in another case in the amount of local traffic that is routed through a tandem, Bell Atlantic presented yet another cost study. This time Bell Atlantic reduced its estimate of increased costs because it admitted that it had used the wrong assumption regarding the percentage of tandem routed local traffic.

Thus, even before the specific criticisms raised by Mr. Turner are considered, the reliability of any estimate that Bell Atlantic provides regarding its so-called increased cost has certainly been called into question. If this case were to continue, with an opportunity to test Bell Atlantic's new cost study, there would likely be further revisions necessary. The bottom line is that Bell Atlantic has admitted that its initial estimate and even subsequent estimate are wrong. It has filed yet another cost study in response to a record request (which does not even seek the cost study "results" provided) after the close of hearings. There is no cost estimate before the Department which Bell Atlantic adopts that has been tested by the adjudicatory process. Bell Atlantic has completely failed to prove its claim that the so-called increased costs are more than de minimus.

Bell Atlantic Made Substantial Errors Which Resulted In Overstated Cost Estimates.

It is AT&T's position that the "increased" costs about which Bell Atlantic complains arise from implementing a federal policy of competition in the local exchange market and that, therefore, Bell Atlantic should not be entitled to recover such costs from CLECs. Nevertheless, if the size of these costs are relevant for any purpose, Bell Atlantic's cost study has certainly not shed any light on it. There are numerous errors that have been carefully identified and quantified in Mr. Turner's pre-filed testimony. Only a few of them are mentioned here.

As Bell Atlantic conceded in its response to DTE RR 104, it incorrectly assumed that no local traffic is switched through a tandem. This error causes Bell Atlantic's cost estimate to be overstated. (Although Bell Atlantic claims to cure this in its most recent revised cost study filing, that filing has not been the subject of discovery or cross-examination.)

Bell Atlantic's mileage estimates are grossly overstated, with the effect of overstating costs.

Bell Atlantic incorrectly weights its cost estimates by trunks without taking into account minutes. The effect is to give much greater weight to longer (and less

heavily used) trunks than is warranted. This results in longer average trunks and a higher cost estimate that is warranted.
Bell Atlantic admits that it incorrectly includes fiber termination costs (an error it sought to cure in one of its many revised cost study filings).
In light of the foregoing problems, and the others described in Mr. Turner’s pre-filed and oral testimony, the Department cannot rely on the cost estimates that Bell Atlantic has submitted.

Bell Atlantic’s Collocation Offerings Are Based On Fundamentally Flawed Cost Studies And Contain Inappropriate Requirements And Limitations.
AT&T already has identified a number of problems with Bell Atlantic’s Collocation proposals that involve things that should be in the tariff, but are not, such as specific charges (as opposed to ICB pricing) and off-site adjacent collocation. The collocation charges that are included are inflated because they are based on flawed cost studies that include unreasonably low utilization factors that permit Bell Atlantic to recover double its actual costs and special charges that also allow it to double-recover costs upon which recurring charges are based. In addition, Bell Atlantic attempts to impose a number of restrictions and conditions on collocation that are inappropriate.

Bell Atlantic’s collocation charges have been shown to be inaccurate, unreliable and inflated.
Bell Atlantic’s collocation charges are based on cost studies that are fundamentally flawed because they rely on improper assumptions and methodology and are without underlying documentation. Further, the studies are based on assumptions that permit Bell Atlantic to double-recover its costs in many instances, Because of the "black box" approach to the studies where Bell Atlantic provides no supporting documentation for its numbers and instead relies on unnamed experts to come up with cost estimates, CLECs are put in the impossible position of trying to verify the accuracy of something they cannot see. As Ms. Murray noted, when presented with a cost and no invoice or other source documents, CLECs have no opportunity to see where the number came from or whether it included labor costs or other loaded costs. They also cannot check whether or not Bell Atlantic made any errors in calculating the costs. A cost study that complies with good practice should include all source documentation, electronic versions of the model and algorithms that are easily traceable; Bell Atlantic’s collocation studies do not comply with good practice. Bell Atlantic did not supply vendor invoices for equipment costs. It presented no evidence that time and motion studies were conducted to determine labor costs. Notwithstanding the limitations placed on the CLECs’ ability to look behind Bell Atlantic’s representations of costs, a number of fundamental problems with Bell Atlantic’s costing approach have been revealed during the course of proceedings.

First, the limited information that was provided about work time estimates revealed how unreliable they were. For example, Bell Atlantic claims that the installation of virtual collocation equipment takes 25 hours. Bell Atlantic arrived at that number by first estimating that installation would take 25 hours and then presenting that estimate to employees who actual install equipment and asking them to confirm that the estimate was accurate. Bell Atlantic’s witness defended the reliability of that estimate by noting that "I think they were free to disagree with the 25 hours if they were so inclined, and we would have revised the cost estimate if it was appropriate." Given the process employed by Bell Atlantic, one cannot help but wonder just how "free" the installers really were to disagree when presented with the estimate, how the estimate was presented and what standard Bell Atlantic applied to whether a revision to the estimate was "appropriate" if the installers were inclined to disagree with the estimate presented to them. Unfortunately, given the witness’ lack of involvement in the process, further inquiry was impossible. It is clear, however, that Bell Atlantic’s approach to calculating costs is far from a textbook model of how to conduct an unbiased cost study.

Further doubt is cast on the accuracy and reliability of Bell Atlantic’s installation cost estimate by the confusion and inconsistencies concerning the breakdown of the 25 hours. We are informed that the 25 hour total includes two hours for delivery time, which is broken down into one hour each for two technicians.

However, another piece of information provided by Bell Atlantic suggests that not two, but four of the 25 hours is attributed to delivery time. Further, another piece of information provided by Bell Atlantic indicates that not two, but one installer handles the delivery. Bell Atlantic should not be permitted to rely on this haphazard and totally inconsistent approach to calculating costs to arrive at charges that will be imposed on collocating CLECs. It should be ordered to prepare thorough, reliable and fully documented cost studies before it is permitted to impose such charges on its competitors.

Moreover, a simple comparison of the numbers proposed by Bell Atlantic with similar charges imposed in another state reveals how inflated the numbers proposed in this docket are. For example, in connection with its Secured Collocation Open Environment ("SCOPE") offering, Bell Atlantic imposes non-recurring charges totaling $5,685, as compared to SCOPE non-recurring charges totaling $1,859 in Pennsylvania.

Further, not only are Bell Atlantic's representations of collocation costs unreliable, they are duplicative. Bell Atlantic proposes to impose unspecified "special construction" charges on CLECs in unspecified instances for unspecified work. It is not clear to what extent these special charges would be imposed and the designation of special costs as applying in "unusual" or "extraordinary" circumstances gives Bell Atlantic complete discretion over when they will be imposed. We do know that the special construction charges would be imposed on CLECs to recover space conditioning costs in instances when they are placed in collocation space that had not previously been conditioned for collocation. In that situation, the proposed tariff double-recovers Bell Atlantic's actual costs because the recurring TELRIC collocation charges include the cost of conditioning the space. Not only does the assessment of special construction costs result in double-recovery because conditioning costs already are included in the recurring rates, Bell Atlantic applies utilization factors (though does not explain how that is possibly consistent with a case-by-case pricing mechanism that assumes CLECs are paying as they go for work that is done) that can result in further over-recovery of costs. Bell Atlantic acknowledges that it would include in the special construction charge the cost of building excess space and would over-recover its costs if it was able to fill the excess space with other CLECs.

Bell Atlantic's collocation cage costs also are inflated because they include an unreasonably low 50% utilization factor. As Bell Atlantic acknowledges, use of a 50% fill factor has the effect of doubling costs. It also acknowledges that if more than 50% of the space is used by CLECs then Bell Atlantic will over-recover its costs. Remarkably, Bell Atlantic claims that it has based its cost study on the assumption that it will be building, and charging CLECs for the cost of building, space that it expects to be 50% empty in the long run. The 50% utilization factor was determined by taking the average of what Bell Atlantic expected utilization rates to be in different areas of the state, assuming that utilization will be higher in more densely populated areas than in outlying central offices. Yet, Bell Atlantic did not review different utilization factors for central offices in different parts of the state in determining the factor, used no data points to arrive at the number and applies the same factor to each of the four density zones in the state. This 50% utilization factor, which might be justified for some other kind of facility that involves difficult planning and high costs activities such as ripping up streets that cannot be repeated every time new capacity needs to be added, is completely inappropriate when we are dealing with preparing caged collocation space.

Bell Atlantic is seeking to impose unreasonable terms and conditions on collocation. In addition to imposing charges that are inflated and unsupported, Bell Atlantic's proposed tariff submission imposes a number of unreasonable terms and conditions. Bell Atlantic collocation offerings fail to comply with the requirements established by the FCC in its Advanced Services Order. Because there are so many tariff provisions that violate the Advanced Services Order, the Department should order Bell Atlantic to comply with the terms of the order as a general matter, so as not to suggest approval of any provision not specifically highlighted.

A number of these concerns were addressed by the Department in D.T.E. 98-58, which resolved issues regarding collocation intervals and certain collocation conditions and it is imperative that the revisions called for by the Department's September 17, 1999 compliance filing Order in that docket be incorporated and that the proposed sections considered and not adopted in D.T.E. 98-58 be removed from the tariff. AT&T is not aware of the filing of tariff revisions that incorporate that Order's requirements. Further, it does not appear from Bell Atlantic's testimony that it has, or intends to, comply with that Order. For example, in D.T.E. 98-58, the Department specifically addressed the time frames proposed by Bell Atlantic for informing CLECs whether collocation space is available in a central office. After the parties took issue with whether the twenty day period contained in Part E, Section 2.1.2 C. 3 of the tariff was appropriate in light of the Department's order that CLEC's must be informed within ten days (AT&T took the position that the twenty days constituted an effective discretionary extension of the ten days ordered by the Department and reflected in the first unnumbered paragraph of 2.1.2 C), the Department in the compliance filing Order required that only 2.1.2 C. 1-2 and 4 (but not C. 3) be included in the tariff. Yet at hearings, Bell Atlantic continued to suggest that the twenty day rule in 2.1.2 C. 3 still was appropriate. Bell Atlantic should not be permitted to advocate that collocation tariff provisions considered and not adopted in D.T.E 98-58 be included in the tariff. Indeed, the Department specifically provided parties in this docket with the opportunity to participate in the compliance filing proceedings in D.T.E 98-58 because the determinations made there would resolve issues relating to Tariff 17 provisions that otherwise would have been addressed in this docket.

There are a number of further problems with Bell Atlantic's collocation terms and conditions, in addition to issues considered and resolved in D.T.E. 98-58. There is a discriminatory disparity between how Bell Atlantic treats CLECs' need for space and its own needs. Bell Atlantic permits itself to reserve central office space for three to five years, as compared to the six months CLECs are permitted. The tariff imposes restrictions on the types of equipment CLECs can install, which is at odds with the specification in paragraph 28 of the Advanced Services Order that ILECs may not prohibit CLECs from collocating equipment that is used or useful for interconnection or UNE access. Bell Atlantic's proposed tariff language violates paragraph 35 of the Advanced Services Order by imposing equipment safety and performance standards other than the NEBS 1 standards specified by the FCC. The proposed tariff provisions also are at odds with paragraph 49 of the Advanced Services Order, which requires that CLECs have 24 hour access to its equipment without escort or any other requirements that would delay entry to the premises, by requiring escorts, one hour prior notice of planned visits and confidentiality agreements. Bell Atlantic informs CLECs that express concern about the security of their equipment located at a central office that their only option is to go buy a lockable cabinet, but proposes that it be allowed to impose substantial security measures, such as security cameras, security escorts and ID badges, to protect its equipment and that the CLECs pay for those security measures. Bell Atlantic allows CLECs to install collocation equipment in other states, but proposes in the tariff to require CLECs to pay Bell Atlantic to install equipment.

These examples of the numerous problems with Bell Atlantic's collocation proposal illustrate the need for an entirely revised tariff that includes clearly specified charges that are based on reliable fully-documented cost studies and includes terms and conditions that are fair, non-discriminatory and consistent with the Advanced Services Order and the Department's analysis of collocation issues in D.T.E. 98-58.

The department should not approve Bell Atlantic's proposed OSS charges, which were rejected in the Consolidated Arbitrations or its proposed non-recurring cost charges, which the Department has ordered not to be considered in this docket. The computer related charges included at Part M, § 2.10.1, page 20, Part M, §§ 3.1.4, 3.1.5 and 3.1.6, page 4 and Part M, §3.18, page 7 of the proposed tariff and identified in the Workpapers included with Exh. DTE-44 as being derived from "onset workpapers" are the same charges that were explicitly rejected by the Department in Phase IV-L of the Consolidated Arbitrations. In its Phase IV-L Order dated October 14, 1999, the Department denied Bell Atlantic's request for recover of Operational Support Systems ("OSS") charges included in Tariff 17 and specified that Bell

Atlantic must, if it chooses to attempt again to recover the OSS costs included in its study, do so through a price cap exogenous cost recovery request. In its Order on Motions for Reconsideration dated January 10, 2000, the Department clarified that Bell Atlantic may not recover its proposed Call Usage Detail Charges because such computer-related costs already are recovered through Bell Atlantic’s recurring rates and permitting a separate charge would amount to double-recovery of costs. Thus, those same charges should not be included in the tariff.

In the Consolidated Arbitrations Phase IV-O Order on Motions for Reconsideration, the Department also rejected Bell Atlantic’s request that application of non-recurring charges be dealt with in this docket and instead confirmed that the Department would address applications of non-recurring costs in the Consolidated Arbitrations rather than this docket. Thus, the non-recurring charges proposed by Bell Atlantic in this docket should not be approved. In fact, in it Phase IV-L Order in the Consolidated Arbitrations, the Department concluded that Bell Atlantic needed to make substantial adjustments to its proposed non-recurring cost charges (the charges that have been incorporated in proposed Tariff 17). Instead, any non-recurring charges to be assessed under the tariff should be drawn from the Department’s decision on Bell Atlantic’s non-recurring cost compliance filing in the Consolidated Arbitrations docket.

Bell Atlantic’s Enhanced Extended Link Offering Imposes Inappropriate Conditions On CLECs And Includes Inappropriate Charges.
Bell Atlantic proposes to place inefficient and unreasonable restrictions on a CLEC’s use of the Enhanced Extended Link ("EEL") offering the Department ordered Bell Atlantic to add to the tariff, despite the Telecommunications Act and FCC’s express prohibition against just such use restrictions. Bell Atlantic uses an improper embedded cost study to support its requested link test charges, which should not be recovered in any event because link test charges already have been incorporated in recurring rates.

Part B, Section 13.1.B of the proposed tariff prohibits EEL arrangements from being connected to Bell Atlantic’s special access multiplexing or transport services that already have been purchased by CLECs to provide special access service to local exchange customers. This attempt by Bell Atlantic to impose restrictions on a CLEC’s use of network elements is not permitted by the FCC. The FCC has recognized that Section 251 (c) (3) of the Telecommunications Act of 1996, which requires incumbent local exchange carriers to provide access to network elements on terms that are just, reasonable and nondiscriminatory, precludes the imposition of restrictions on how the network elements are used. The FCC made this point clearly in both its Local Competition Order and in regulations implementing the Act’s requirements. In the Local Competition Order, the FCC concluded that (1) "Section 251 (c) (3) does not impose any service-related restrictions or requirements on requesting carriers in connection with the use of unbundled elements" and (2) "incumbent LECs may not impose restrictions upon the uses to which requesting carriers put such network elements." Further, 47 C.F.R. § 51.307 (c) provides that incumbents must provide network elements "in a manner that allows the requesting carrier to provide any telecommunications service that can be offered by the means of that network element." In addition, 47 C.F.R. § 51.309 (a) provides that incumbent carriers "shall not impose limitations, restrictions, or requirements on requests for, or the use of, unbundled network elements that would impair the ability of a requesting carrier to offer a telecommunications service in the manner the requesting telecommunications carrier intended."

Bell Atlantic in Section 13.1.B purports to prohibit EEL arrangements that cross LATA boundaries, but provides no technical reason for that inappropriate restriction. The inappropriateness of this unexplained provision is demonstrated by Bell Atlantic’s response to Record Request 95 in which it reveals that there are local calling areas in Massachusetts that cross LATA boundaries.

Section 13.3.1A requires CLECs to certify that they are providing a "significant" amount of local exchange service over EELs, a requirement that AT&T does not object to because it is consistent with the FCC’s November 24, 1999 Order supplementing the

UNE Remand Order (the "Supplemental Remand Order") AT&T does, however, have a problem with Bell Atlantic's attempt to define "significant," something the FCC opted not to do in the Supplemental Remand Order. Instead, the FCC gave two examples that would be treated as "significant." Bell Atlantic's suggestion that anything other than the two examples is not significant is illogical. If the FCC wanted to use the examples to define a limiting standard, rather than for illustrative guidance purposes, it would have done so. Instead, the FCC emphasized the limited time the requirement likely will be in effect, left it to the good judgment of CLECs to self-certify that they were providing significant local exchange traffic and expressly provided that ILECs and CLECs should not be undertaking auditing and monitoring efforts during that time. Thus, Bell Atlantic's definition of significant should be rejected, as should its reservation in Section 13.2.1.B. of the proposed tariff of the right to conduct audits.

Bell Atlantic's proposal to recover EEL link test charges also should be rejected. First, the study is clearly based on embedded costs rather than the forward-looking TELRIC costs used to determine UNE rates, as is evidenced by its use of 1995 cost data. In addition, as demonstrate in AT&T's response to Record Request 99, permitting Bell Atlantic's recovery of EEL link test charges would be inappropriate because the costs already have been included in the Administrative Factors included in the recurring loop rates. Bell Atlantic acknowledges this problem in its response to Record Request 87, but inappropriately advocates for a different and lesser charge to be imposed. It agrees that test charges were included in the recurring rates, but (although it does not explain its methodology) claims that it should be able to calculate an EEL link charge based upon the avoided retail portion of the test costs, apparently arguing that because the avoided retail portion of the test costs was excluded from the factors applied to the recurring rates, it may be recovered now. The problem with Bell Atlantic's logic is that while the portion of the costs assigned to avoided retail are not included in the recurring loop rates, that portion is excluded because it is, by definition, not part of the cost of wholesale services. Because EEL is a wholesale offering, avoided retail costs should not be factored into the applicable rates in any way.

There Are A Number Of Additional Miscellaneous Problems With The Tariff Proposal. The proposed tariff also includes numerous other one-sided terms and conditions that advance Bell Atlantic's business interest to the detriment of the CLECs and their customers and should be rejected by the Department. For example, the tariff provides that Bell Atlantic may unilaterally make changes to the network that could negatively impact the quality of CLEC services to their customers without the involvement of CLECs in the network design change process and without even notice to the CLECs of the network change. The tariff should, at a minimum, describe a joint design process involving both the CLEC and Bell Atlantic, with recourse to the Department to resolve any dispute.

Bell Atlantic places a low limit on the number of expedited orders, 5% of the previous month's orders, CLECs can place that is wholly arbitrary and not based on any quantitative analysis. This approach is particularly burdensome on newer CLECs whose orders are increasing at a high rate from month to month. Bell Atlantic, however, imposes no limitations on the number of expedited orders for its own retail customers. This discriminatory restriction should be rejected.

Bell Atlantic proposes to require burdensome forecasts from CLECs requiring them to accurately project their requirements for periods of years and lose the right to hold Bell Atlantic to performance standards if the forecasts are not accurate. Yet it does not require itself to provide CLECs with forecasts of its future use of central office space so that CLECs will be able to anticipate collocation space availability.

Part B, Section 6.3.2.B of the proposed tariff includes a switch charge that is applied twice for a single call and already has been directly rejected in New York. This duplicative charge should be rejected here as well.

In the face of an industry-wide problem of documenting calls that results from the inability of a PBX to distinguish which lines on a trunk are making calls, Bell Atlantic is insisting on a "ridiculous" requirement that CLECs provide Bell Atlantic with detailed records of every call made. This would be an expensive solution to the calling party number ("CPN") disclosure issue and would make local service more expensive for the consumers of Massachusetts. This is an issue that people in the industry are talking about and trying to fix. Even Bell Atlantic agrees that when a call originates on a PBX, that is a reasonable explanation for why CPN disclosure requirements cannot be met. This is not a problem that should be resolved by Bell Atlantic imposing burdensome requirements on CLECs through tariff provisions. Given the industry problem, Bell Atlantic’s unreasonable proposal to assume that all calls that cannot be documented are access traffic and to charge at the higher access rate also should be rejected as inappropriate.

Bell Atlantic’s proposed tariff gives Bell Atlantic the unilateral right to discontinue service for a variety of reasons, including the perceived violation of any term governing the furnishing of network element service. The proposed tariff includes no dispute resolution procedures in such a situation. It is completely inappropriate for Bell Atlantic to have this power over its competitors. AT&T recommends that Bell Atlantic be ordered to incorporate in the tariff the reasonable dispute resolution procedures contained in its ICA at General Terms and Conditions, ¶ 16 at 16-23.

Finally, there are a number of clarifications that need to be made to tariff language to ensure that the meaning is clear or to incorporate changes Bell Atlantic has agreed to make. Part B., Section 2.1.1.A.1 should be revised in accordance with AT&T’s response to Record Request 28 to clarify that shared transport can be unbundled from switching and other elements. In a similar vein, the description of IOF transport should be revised to correspond to language contained in AT&T’s ICA and eliminate language that could be read as restricting the types of service the transport can be used for and the usage of transport based on LATA boundaries. Bell Atlantic has agreed to withdraw the requirement of a 10 foot buffer between CLEC equipment and Bell Atlantic equipment and should be ordered to do so. Bell Atlantic also has agreed to incorporating in the tariff the carrier-to-carrier standards established in the Massachusetts 271 proceeding and should be required to do so.

Conclusion

For the foregoing reasons, the Department should reject Bell Atlantic’s proposed Tariff 17 in its entirety and order Bell Atlantic to file a revised tariff that incorporates the criticisms raised by AT & T and other parties to this docket.

AT&T COMMUNICATIONS OF NEW ENGLAND, INC.

Respectfully submitted,

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